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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 618

MARY BRISCOE, ET AL., PETITIONERS,

vs.

LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF LOUISIANA

INDEX

	Original	Print
Record from the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana		
Information in case No. 35566	1	1
Application for bill of particulars	3	3
Proposed order granting bill of particulars	7	6
Motion to quash	8	6
Minute entry denying applications for bills of particulars, etc.	12	9
Minute entry denying motions to quash, etc.	13	11
Minute entry of arraignment and plea of not guilty	14	12
Notice of intention to apply for writs	15	13
Bill of exceptions in case No. 35566	16	14
Proceedings in the Supreme Court of the State of Louisiana	18	15
Application for writs of certiorari, mandamus and prohibition, invoking supervisory jurisdiction over the Nineteenth Judicial District Court, etc. in case No. 45212	18	15
Affidavit of Johnnie A. Jones	22	19
Brief	23	20
Opinion and judgment in case No. 45212	28	25
Application for rehearing in case No. 45212	29	26
Brief in support	31	27

Endorsement on petition for rehearing reading "Application not considered, etc." _____	33	29
Præcipe (omitted in printing) _____	34	29
Record from the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana	36	29
Transcript of hearing of June 2, 1960 in case No. 35566 _____	36	29
Appearances _____	36	29
Testimony of Marilyn Fletcher—		
direct _____	38	30
cross _____	40	31
Captain Robert Weiner—		
direct _____	43	34
cross _____	45	35
redirect _____	48	38
recross _____	48	38
Finding of guilt _____	48	38
Minute entry of finding of guilt _____	51	40
Motion for new trial in case No. 35566 _____	52	41
Minute entry overruling motion for new trial _____	55	43
Minute entry of sentence _____	55	43
Bill of exceptions in case No. 35566 _____	57	44
Proceedings in the Supreme Court of the State of Louisiana _____	59	46
Application for writs of certiorari, mandamus and prohibition invoking supervisory jurisdiction over the Nineteenth Judicial District Court, etc. in case No. 45336 _____	59	46
Affidavit of Johnnie A. Jones _____	62	49
Brief _____	63	50
Opinion and judgment in case No. 45336 _____	70	56
Petition for stay of execution and order granting same in case No. 45336 _____	71	57
Petition to release Eddie C. Brown, Jr. from cus- tody pending his applying to the Supreme Court of the United States and order granting same in case No. 45336 _____	74	59
Præcipe (omitted in printing) _____	77	61
Clerk's certificates (omitted in printing) _____	79	61
Order allowing certiorari _____	81	62

[fol. 1]

**IN THE NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA**

INFORMATION—Filed April 27, 1960

Ralph L. Roy Assistant District Attorney of the nineteenth Judicial District of the State of Louisiana, who, in name and by authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

- | | |
|-----------------------------|--------------------------|
| 1. Mary Briscoe (CF) | 5. Lawrence Hurst (CM) |
| 2. Eddie C. Brown, Jr. (CM) | 6. Sandra Ann Jones (CF) |
| 3. Larry L. Nichols (CM) | 7. Mack Jones (CM) |
| 4. Charles L. Peabody (CM) | |

late of the Parish of East Baton Rouge, on the Twenty-ninth day of March in the year of our Lord One Thousand Nine Hundred and Sixty with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did unlawfully violated Article 103 (Section 7) of the Louisiana Criminal Code in that they refused to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Greyhound Restaurant; said conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Ralph L. Roy, Assistant District Attorney, Nineteenth Judicial District of Louisiana.

[fol. 2]

[File endorsement omitted]

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

No. 35566

STATE OF LOUISIANA

VERSUS

1. MARY BRISCOE (CF) Southern University
2. EDDIE C. BROWN, JR. (CM) 417 W. Grant
3. LARRY L. NICHOLS (CM) Southern Univ.
4. CHARLES L. PEABODY (CM) Southern Univ.
5. LAWRENCE HURST (CM) 8148 James St.
6. SANDRA ANN JONES (CF) Southern Univ.
7. MACK JONES (CM) 1654 Snipe St.

INFORMATION

DISTURBING THE PEACE

Filed April 27 A. D., 1960

Betty Brady, Deputy Clerk, Nineteenth Judicial District Court.

Assistant District Attorney

WITNESSES:

Chief Arrighi, Capt. Weiner, Lt. Martin, Sgt. Defez.

4/27/60

4/29/60

[fol. 3]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

Case Number

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

APPLICATION FOR BILL OF PARTICULARS—Filed April 25, 1960

Now into this Honorable Court come Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, defendants in the above entitled and numbered cause, and before arraignment, plead that they are unable to answer to the Bill of Information, and plead that they are unable to properly prepare their defenses herein, until they are furnished with a Bill of Particulars upon the following, to-wit:

—1—

At what time and place was the defendants conduct of such a manner as to unreasonably disturb the public?

—2—

State the time, place, names and addresses of the persons in whose presence the defendants' conduct was of such a manner as to unreasonably disturb the public.

—3—

Describe the act or acts the defendants allegedly unlawfully committed in violation of Article 103 of the Louisiana Criminal Code in such manner as to unreasonably disturb the public.

—4—

State the specific acts or offenses the defendants committed, giving the specific time, place and the names, addresses and official capacity of the persons in whose presence the acts or offenses were committed in such a manner [fol. 4] as to unreasonably disturb the public.

—5—

In what manner did the defendants conduct themselves in the presence of others so as to unreasonably disturb the public?

—6—

What acts, if any, and in what manner were said acts committed, so as to unreasonably disturb the public, and in whose presence were said acts committed?

—7—

State the name, address, and the official capacity of the agent of Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, who ordered the defendants to move from a cafe counter seat at or in the said Greyhound Restaurant, and by whose authority and/or under what authority the agent of the Greyhound Restaurant was acting when said agent ordered the defendants to move from a cafe counter seat at the said Greyhound Restaurant.

—8—

State the reasons or causes for the agent of the said Greyhound Restaurant to request or ask the defendants to move from a cafe counter seat at or in said Greyhound Restaurant and by whose authority and/or under what authority was the said agent of said Greyhound Restaurant acting when said agent requested and/or asked the defendants to move from a cafe counter seat at or in said Greyhound Restaurant.

—9—

State whether or not the agent of the said Greyhound Restaurant requested the defendants to move from a cafe

counter seat merely because the defendants were and are members of the Negro race, and whether or not the agent of said Greyhound Restaurant was acting under the segregation laws of the State of Louisiana and/or under the laws, ordinances or regulations of the City of Baton Rouge, Louisiana, or whether or not the said agent of the said Greyhound Restaurant was acting under the laws, ordinances, regulations, customs and/or usages of the State of Louisiana and/or the City of Baton Rouge, Louisiana when said agent requested the defendants to move from said cafe counter seats.

[fol. 5] Wherefore, your defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, pray that the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, be ordered by this Honorable Court to furnish the said Bill of Particulars above requested; and that service of same be made upon your defendants; and that, the Honorable District Attorney for the Parish of East Baton Rouge, State of Louisiana, be duly served with a copy hereof.

And your defendants pray for all such other relief to which they are or may be entitled.

Attorney for Defendants: Johnnie A. Jones.

Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones, Mack Jones.

[fol. 6] *Duly sworn to by Mary Briscoe, Eddie C. Brown, Jr., et al., jurats omitted in printing.*

[File endorsement omitted]

[fol. 7]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

PROPOSED ORDER GRANTING BILL OF PARTICULARS

Let Honorable J. St. Clair Favrot, District Attorney of the Parish of East Baton Rouge, State of Louisiana, be and he is hereby Ordered to furnish the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, the Particulars requested in the foregoing application, within days from the date hereof.

Baton Rouge, Louisiana, this day of April, 1960.

_____, Judge, 19th Judicial District Court of Louisiana.

[fol. 8]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION TO QUASH—Filed April 27, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, the defendants in the above entitled and numbered cause, move

to quash the Bill of Information for the following reasons, to-wit:

—1—

That the Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, in that it fails to allege any unlawful act or acts the defendants had committed or were committing when they were ordered to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana.

—2—

That the said Bill of Information is insufficient to charge an offense under Article 103 of the Louisiana Criminal Code, because it merely alleges that the defendants refused to move from a cafe counter seat at the said Greyhound Restaurant after having been ordered to do so by the agent of Greyhound Restaurant, and fails to allege that the defendants committed any unlawful act or acts set forth and/or enumerated under LSA-R. S. 14:103 of 1950, as amended.

—3—

That the said Bill of Information does not allege any unlawful act or acts committed by the defendants which set forth and enumerated in and/or under LSA-R. S. 14:103 [fol. 9] of 1950, as amended.

—4—

That the said Bill of Information fails to show or allege the manner in which the defendants disturbed the peace: that the mere refusal of the defendants to move from a cafe counter seat when ordered to do so by an agent of the said Greyhound Restaurant is not embraced within the terms of said Statute, LSA-R. S. 14:103, and does not constitute a disturbance of the peace, as such.

—5—

That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that

"the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Greyhound Restaurant constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—6—

That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

—7—

That your defendants, each, allege and aver that they are members of the Negro race and were, on the 29th day of March, 1960, college students matriculated at Southern University and A & M College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 29th day of March, 1960, "sit in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1,500.00) Dollars bond, each.

Wherefore, your defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, each, pray that this Motion to Quash be maintained and that the said Bill of Information as to them, each, and as for as they,

each, are concerned, be declared null and void, and that they, each, be discharged therefrom.

Movers further pray for all necessary orders, and for general and equitable relief in the premises.

Attorney for Defendants: Johnnie A. Jones.

Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones, Mack Jones.

[fol. 11] *Duly sworn to by Mary Briscoe, Eddie C. Brown, Jr., et al., jurats omitted in printing.*

[File endorsement omitted]

[fol. 12]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

DIVISION "A"

MINUTES OF COURT—Wednesday, April 27, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566—Criminal Docket

Bill of information filed.

STATE OF LOUISIANA,

vs.

MARY BRISCOE, et al.

No. 35,566

STATE OF LOUISIANA,

vs.

MARY BRISCOE, et al.

No. 35,567

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

No. 35,568

STATE OF LOUISIANA,

VS.

JOHN BURRELL GARNER,
VERNON JOHNNIE JORDON.

These cases came before the court on application for bills of particulars filed herein on-behalf of the accused.

On motion of counsel for the accused, A. T. Tureaud was ordered enrolled as associate counsel of record for the accused. On the further motion of counsel for the accused, the Court ordered that these cases be consolidated for the purpose of this hearing.

On motion of the Assistant District Attorney, and by agreement of counsel for the accused, each of the bills of information herein was amended so as to add "(Section 7)" after "Article 103," and to insert the words "and foreseeably" between the word "unreasonably" and the word "disturb."

**MINUTE ENTRY DENYING APPLICATIONS FOR
BILLS OF PARTICULARS, ETC.**

The applications for bills of particulars were argued and submitted, and the Court, for oral reasons assigned, rendered judgment denying the applications for bills of particulars in these cases, to which ruling of the Court counsel for the defendant objected and reserved a formal bill of exception, asking that the application filed in each of these

[fol. 13] cases for bills of particulars on behalf of these defendants and the ruling of the Court be made a part of the record.

Counsel for the accused filed a motion to quash in each of these cases, which motions were assigned for argument Friday, April 29, 1960 at 2 o'clock P.M.

MINUTES OF THE COURT—Friday, April 29, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566

STATE OF LOUISIANA,

VS.

MARY BRISCOE, et al.

No. 35,567

STATE OF LOUISIANA,

VS.

JANNETTE HOSTON, et al.

No. 35,568

STATE OF LOUISIANA,

VS.

**JOHN BURRELL GARNER,
VERNON JOHNNIE JORDON.**

MINUTE ENTRY DENYING MOTIONS TO QUASH, ETC.

These cases came before the court on motions to quash filed herein on behalf of the defendants. By agreement of counsel for the accused and the Assistant District Attorney, these cases were consolidated for the purpose of this hearing. The motions to quash were argued and submitted, and the Court, for oral reasons assigned, rendered judgment herein denying the motions to quash, to which ruling of the Court counsel for the accused objected and reserved a formal bill of exception, and asked that the Court's ruling be made a part of the record; that the bill of informations be made a part of the record, and that defendants' motions to quash be made a part of the record.

Counsel for the accused gave written notice to the court of their intentions to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel a period of ten days from this date in which to apply for writs.

[fol. 14]

No. 35,566—Criminal Docket

STATE OF LOUISIANA,

vs.

MARY BRISCOE, et al.

MINUTE ENTRY OF ARRAIGNMENT AND PLEA OF NOT GUILTY

The accused, charged with disturbing the peace, were present in court represented by counsel, and through counsel waived formal arraignment on said charge and pleaded not guilty.

On motion of the Assistant District Attorney, this case was assigned for trial June 2, 1960.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 15] [File endorsement omitted]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

NOTICE OF INTENTION TO APPLY FOR WRITS—
Filed April 29, 1960

To the Honorable, The Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

And now into this Honorable Court come Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, defendants in the above entitled and numbered cause, respectfully notify and inform this Honorable Court that defendants will apply to the Supreme Court of the State of Louisiana in the above numbered and entitled case for Writs of Certiorari, Mandamus and Prohibition, and such other Writs as may be necessary to have the judgment of Your Honor which denied, rejected and/or overruled the defendants' "Motion to Quash" reversed, set aside and/or declared null and void.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A.
P. Tureaud, By: Johnnie A. Jones.

[fol. 16]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—May 6, 1960

To the Honorable, The Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that in this Honorable Court on Wednesday, April 27, 1960, the Application for Bill of Particulars was argued and submitted and the Court for oral reasons assigned, rendered Judgment denying the Application for Bill of Particulars in this case, to which ruling of the Court Counsel for the Defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, did then and there except and reserve a formal Bill of Exceptions thereto, asking that the Application filed in this case for Bill of Particulars on behalf of the said defendants, and the ruling of the Court be made a part of the record.

—2—

Be It Further Remembered, that on Friday, April 29, 1960, the defendants' Motion to Quash was argued and submitted, and the Court, for oral reasons assigned, rendered Judgment denying the Motion to Quash to which ruling of the Court Counsel for the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, did then and there except and reserve a formal Bill of Exceptions, and ask that the Court's ruling be made a part of the record; that the Bill of Information be made a part

of the record and that defendants' Motion to Quash be made a part of the record.

[fol. 17] The defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, through their Attorneys of Record, having submitted this their Bills of Exceptions to the District Attorney now tenders the same to the Court and pray that the same be signed and sealed by the Judge of the Honorable Court pursuant to the Statute in such case made and provided, which is done accordingly this 6th day of May, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court
of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A.
P. Tureaud, By: Johnnie A. Jones.

[fol. 18]

IN THE SUPREME COURT OF LOUISIANA

Number 45212

STATE OF LOUISIANA, Appellee,

versus

MARY BRISCOE, et al., Defendants-Appellants.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PRO-
HIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE
NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST
BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding

To the Honorable, Chief Justice and Associate Justices of
the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of
Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols,

Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That, by the Honorable District Attorney of the Nineteenth Judicial District Court of the State of Louisiana, Parish of East Baton Rouge, your relators, all Negro college students are charged with the crime of "DISTURBING THE PEACE" under the provisions of LSA-R. S. 14:103(7) of 1950, as amended, in that, allegedly on the 29th day of March, 1960, your relators refused to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Greyhound Restaurant; said conduct, allegedly, being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

[fol. 19]

—2—

That your relators, each, alleged and averred that they are members of the Negro race and were on the 29th day of March, 1960, college students, matriculated at Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your relators, each, in protest of the segregation laws of the State of Louisiana did on the 29th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your relators, each, were arrested, charged criminally with "DISTURBING THE PEACE," jailed and placed under a Fifteen Hundred (\$1500) Dollar bond, each.

—3—

That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process in such a situation denies and deprives the relators of their

rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

—4—

That the refusal of your relators to move from a cafe counter seat at Greyhound Restaurant in obedience of an order by an agent thereof is not a crime embraced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a crime within the terms and meanings of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—5—

That the Bill of Information under which your relators are charged is insufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, in that said Bill of Information fails to particularize and specify a crime set forth and specifically enumerated in said Statute; that LSA-R. S. 14:103(7) of 1950, as amended, does not specify, [fol. 20] enumerate nor embrace the crime of which your relators are charged.

—6—

That, thus, the relief which your relators seek herein under the Application for Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—7—

That the Honorable Nineteenth Judicial District Court was in error in denying your relators the Application for Bill of Particulars and refusing the Motion to Quash; that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of this proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after a trial on the merits of this cause is had; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, certified copies of which being hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso."

—8—

That relators have given due notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge, of relators' intention to apply to this Honorable Court for the Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and the rules of this Honorable Court.

Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and to send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, Number [fol. 21] 35,566, State of Louisiana, Appellee versus Mary Briacoe, et al., Relators, and that the said decree or judgment of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may

have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 22] State of Louisiana
Parish of East Baton Rouge

AFFIDAVIT

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relators in the above and foregoing pleadings; that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 6th day of May, 1960.

Murphy W. Bell, Notary Public.

BRIEF

May It Please the Court:

The Opinions of the District Court

This case, on Wednesday, April 27, 1960 and on Friday, April 29, 1960, respectively, was before the Honorable Court on "Application for Bill of Particulars" and "Motion to Quash," certified copies of which are hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso," together with an extract of the Minutes of the Court of said dates; that for oral reasons assigned, the Court rendered Judgment denying the "Application for Bill of Particulars" and the "Motion to Quash."

Jurisdiction

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

Syllabus

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to

be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

Statement of the Case

The defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones (hereinafter called "Relators"), are Negro college students charged with the

crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the "Bill [fol. 25] of Information" charges the relators with having committed a crime by refusing to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, on the 29th day of March, 1960, after having been ordered to do so by the agent of the said Greyhound Restaurant, relators' conduct being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, et cetera.

Your relators in Article Seven of their "Motion to Quash" alleged the following, to-wit:

"That your defendants, each, allege and aver that they are members of the Negro race and were, on the 29th day of March, 1960, college students matriculated in Southern University and A. & M. College, for Negroes, at Baton Rouge, Louisiana; that your defendants, each, in protest of the segregation laws of the State of Louisiana, did on the 29th day of March, 1960, "sit-in" a cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested, charged criminally with Disturbing the Peace, jailed and placed under a Fifteen Hundred (\$1500.00) Dollars bond, each."

Relators in Article Six of their "Motion to Quash" alleged and averred the following, to-wit:

"That while the arrests and charges were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

Specification of Errors

1. That the Honorable Trial Court erred in refusing and/or denying relators' "Application For Bill of Particulars," the answers thereto being necessary to apprise your relators of the nature of the crime, if any, they had committed, the relators' act of commission being not a crime specified or enumerated in the statute under which relators are being prosecuted.
2. That the Honorable Trial Court erred in refusing, denying and/or overruling relators' "Motion to Quash," the "Bill of Information" under which they are charged, said Bill of Information being, patently, erroneous on its face, in that it did not allege or charge a crime enumerated and defined specifically by statute, particularly, LSA-R. S. 14:103(7) of 1950, as amended.

[fol. 26]

Issue

Whether or not the "Bill of Information" under which relators are charged is sufficient to allege a crime under LSA-R. S. 14:103(7) of 1950, as amended, or whether or not the act which the Bill of Information charges is a crime embraced in the criminal processes of the State of Louisiana, and particularly in LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said Statute unconstitutional in that it deprives persons, particularly relators, of rights, liberties, privileges and immunities guaranteed by the Constitution of both the State of Louisiana and the United States of America, and, thus, violates the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States of America?

Argument

It is vigorously contended that the statute under which relators are charged is too vague to denounce a crime, and that it certainly does not make the act of your relators a crime. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that

defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

It is submitted that this case is analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943) and *Marsh v. Alabama*, 326 U. S. 501 (1945-1946), in which cases the defendants therein refused to obey orders of persons in authoritative capacity. However, the respective Courts, in essence, held that the mere refusal to obey an order of one in charge, within itself does not constitute a breach of the peace.

This Honorable Court's attention is called to the fact that the statute, under which relators are charged, discloses a number of acts or offenses, necessarily different and distinct, as embraced within its terms as constituting disturbances of the peace. However, the act of refusing to move after being ordered to do so by a proprietor or agent of a store is not enumerated among those acts or offenses as constituting a disturbance of the peace. Thus, it cannot be maintained consistently with the established jurisprudence that relators' act was calculated and construed to disturb the peace. "An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and likewise, *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960); *State v. Verdin*, 192 La. 275, 187 So 666 (1939).

Conclusion

Thus, it is respectfully submitted that the "Bill of Information" under which your relators are charged is insufficient to charge or allege a crime, and is invalid on its face; that the act of relators, "refusing to move from a cafe counter seat after being ordered to do so by an agent thereof," is not a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or Judgments of the Honorable District Court be reversed and that the "Bill of Information" as to them, each, and as far as they are concerned be declared null and void, and that your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of service (omitted in printing).

[fol. 28]

REMEDIAL WRIT

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

No. 45212

STATE OF LOUISIANA

versus

MARY BRISCOE, et al.

OPINION AND JUDGMENT—Filed May 9, 1960

In Re Mary Briscoe et al.

Applying for writs of certiorari, mandamus and prohibition.

Johnnie A. Jones, A. P. Tureaud, Attorneys for Relator.

J. St. Clair Favrot, District Attorney, Attorney for Respondents.

Writs denied. Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction.

FWH, JBH, EHMcC, JDG, WBH, RAV, LPG.

[fol. 29]

IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

APPLICATION FOR REHEARING

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, defendants-relators, respectfully represents:

That the opinion and decree rendered in this cause and by this Honorable Supreme Court on Thursday, May 12, 1960, is erroneous and contrary to the law, that a rehearing should be granted in this case, for the following reasons, to-wit:

—1—

That this Honorable Court in its opinion rendered on Thursday, May 12, 1960, failed to take into consideration that relators alleged, inter alia, in paragraph seven (7) of their original petition for Application for Writs of Certiorari, Mandamus and Prohibition the following, to-wit:

"...; that a trial on the merits of this cause will not produce any better situation than what is already established by the pleadings filed, argued and submitted in the Honorable Nineteenth Judicial District Court and made a part of the records thereof, . . ."

[fol. 30] Wherefore, the premises considered, defendants-relators respectfully pray:

That after due consideration, a rehearing be granted in this case, and that finally there be judgment rendered herein as prayed for by your relators in their original petition for Application for Writs of Certiorari, Mandamus

and Prohibition, and for general and equitable relief in the premises.

Attorneys for Defendants-Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of Service (omitted in printing).

[fol. 31]

BRIEF IN SUPPORT OF APPLICATION FOR REHEARING

May It Please The Court:

ARGUMENT

Point 1

This Honorable Supreme Court pointed out in its written opinion rendered herein on Thursday, May 12, 1960, that:

“Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction.”

This Honorable Court's attention is called to the fact that the relators are attacking the constitutionality of LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . “Commission of any other act in such a manner as to unreasonably disturb or alarm the public.”

Thus, the only legal issue before this Honorable Court is:

Whether or not the act of conduct of which your relators are charged is a crime denounced and defined by said statute, or whether or not said act of conduct of which your relators are charged is a crime embraced within the criminal processes of the State of Louisiana, and particularly within the meaning of said statute?

[fol. 32] It is submitted that the instant case is parallel and analogous to the cases of *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943), and *State v. Christine*, 118 So (2d) 403 (Advanced Sheets, April 7, 1960), in which cases, respectively, this Honorable Court held:

"An act of conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute."

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute."

Thus, it is respectfully submitted that a rehearing should be granted herein and that your relators should be granted the relief as prayed for by them in their original petition for Application for Writs of Certiorari, Mandamus and Prohibition, and that, the Bill of Information as to your relators, each, and as far as they are concerned, the Bill of Information under which relators are charged be declared null and void, and that your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, be discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 33] Certificate of Service (omitted in printing).

Endorsement on petition for rehearing reading "Application not considered—See Rule XII Sec. 5 Rules of this Court. May 24, 1960

FWH, JBH, EHMcC, JDG, RAV, LPG."

[fol. 34] Praeeipe (omitted in printing).

[fol. 36] [File endorsement omitted]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

Number 35,566

STATE OF LOUISIANA

VS.

MARY BRISCOE, et al.

**Transcript of Hearing
Heard on the Merits June 2, 1960**

Honorable Fred S. LeBlanc, Judge Presiding

APPEARANCES:

Ralph L. Roy, Esq., for the State.

Johnnie A. Jones, Esq., A. P. Tureaud, Esq., for the Defendants.

Reported by: Betty Brady

[fol. 38] Counselor Jones: We wish that the record show that we reserve all and any rights we might have under

our application for writs of certiorari, mandamus and prohibition that have been denied and the application for rehearing presently pending.

MARILYN FLETCHER, called as a witness on behalf of the State, having been duly sworn, testified as follows:

Direct examination.

By Counselor Roy:

Q. Your full name please?

A. Marilyn Marie Fletcher.

Q. Is that Miss or Mrs.?

A. Miss.

Q. Miss Fletcher, where are you presently employed?

A. Greyhound Bus Station.

Q. And were you so employed on March 29th of 1960?

A. At the Greyhound Bus Station.

Q. What kind of work do you do over there?

A. I am a waitress.

Q. Were you working there on March 29th of this year?

A. Yes, sir.

Q. And did anything unusual happen there that day?

A. Well, there were five men and two women who walked in there.

Q. Is that these people seated over here?

A. Yes, sir.

Q. All right. Tell the judge what happened.

A. They came in there and they sit down on the front seven seats and they start ordering and I told them they would have to go to the other side to be served.

[fol. 39] Q. Why did you tell them that?

A. Because we are supposed to refuse the service of anyone that comes in there that is not supposed to be on that side.

Q. And who is not supposed to be on that particular side?

A. The colored people are supposed to be on the other side.

Q. Those seats where they were seated are reserved for white people?

A. Yes, sir.

Q. And your instructions are to just let white people sit there, is that correct?

A. Yes, sir.

Q. All right, go ahead.

A. They came there and they said they wanted something and I told them that they would have to go to the other side to be served, and just kept sitting there and so we called the police and told them to come get them.

Q. Were you there when the police got there?

A. Yes, sir.

Q. Did you hear what the police told them and what they told the police?

A. Yes, sir.

Q. What transpired?

A. They said they would give them a chance to get up and go or either they would have to go to jail.

Q. And what happened?

A. And so they just kept sitting there and they took them to jail.

Q. And all of these were seated down on those seats reserved for white people?

A. Yes.

Q. And you told them you couldn't serve them and asked them to move, is that correct?

A. Yes, sir.

[fol. 40] Q. And when they refused to move you called the officers?

A. Yes, sir.

Q. And as an employee there you had those instructions to keep these seats for white people, is that correct?

A. Yes, sir.

Cross examination.

By Counselor Jones:

Q. Miss Fletcher, is that the only reason you asked them to leave is because they were Negroes?

A. Yes, sir.

Q. That's the only reason?

A. Uh-huh.

Q. They hadn't done anything other than sit in those seats which you all had reserved for whites, is that correct?

A. Yes.

Q. Would you mind telling me, Miss Fletcher, whether or not you had a sign on the counter saying for white only?

A. We had the sign up at the top where it says "Refuse service to anyone."

Q. Refuse service to anyone?

A. Uh-huh.

Q. That's whether they are white or black, is that right?

A. Yes.

Q. But the only reason why you refused these students here service, or these defendants service, is because they were members of the Negro race, is that right?

A. Uh-huh.

Q. Is that the only reason why you refused them service is because they were members of the Negro race?

A. Yes.

Q. Now, would you mind telling me, Miss Fletcher, [fol. 41] whether or not you had orders to do that from your boss or from your superior?

A. She told us—she didn't tell us anything, she just said for us to refuse service to anyone, and they came in there and sit down and we have a place on the other side for them to be served at, and they came in there and sit down and I told them they would have to go to the other side to be served.

Q. Now, I don't think you quite understand my question. Now, I asked did you have orders from your superiors or your boss to refuse service to these students because they were Negroes?

A. No.

Q. Refuse it to anybody?

A. Uh-huh.

Q. Now, when you say "anybody," who was anybody?

A. Well, if you all come in and you sit down and we tell you all you have to go to the other side to be served, you all are supposed to go over there because that's where we have the place for you all to be served at.

Q. When you say anybody you meant Negroes?

A. Uh-huh.

Q. Beg your pardon?

A. Yes.

Q. So when you used the word "anybody," by anybody you meant Negroes?

A. Uh-huh.

Q. That will be yes; is that right?

A. Yes.

Q. Now, did these defendants do anything other than sit in those seats where you ordered them removed from?

A. They ordered something and they were told after they ordered something that they would have to go to the other side to be served.

[fol. 42] Q. And that's all they did?

A. Uh-huh.

Q. They didn't do anything else?

A. That's right.

Q. That's all they did?

A. Uh-huh.

Q. You are positive of that?

A. (The witness did not answer the question.)

By the Court:—

Q. As I recall your direct testimony you stated, and if I am not correct correct me, that after they ordered the food you told them that you couldn't serve them, that they had to go over to the other side reserved for colored people, is that right?

A. Yes, sir, that's right.

Q. Did they go over there?

A. No, sir.

Q. Did they refuse to go?

A. Yes, sir, they just sit there.

Q. And who called the officers?

A. One of the bus drivers that was up there, they called them. They were sitting over there in a booth when they came in and they called them.

Q. Was there a place reserved for colored people in this same building?

A. Yes, sir.

Q. That's the Greyhound Bus Station?

A. Yes, sir.

Q. Was it adequate to serve these people, was it large enough to serve these people?

A. Yes, sir.

[fol. 43] Q. At one time?

A. Yes, sir.

By Counselor Tureaud:

Q. Were there any other people waiting to be served while they sat there?

A. No.

Witness excused.

CAPTAIN ROBERT WEINER, called as a witness on behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Counselor Roy:

Q. Your name please.

A. Robert Weiner.

Q. And what do you do?

A. I am a captain with the police department.

Q. Did you have occasion on March 29th of 1960 to go to the Greyhound Bus Station here in this city at 212 St. Phillips Street and participate in an investigation involving these students seated here?

A. I did.

Q. Tell the court exactly what you did.

A. Inspector E. O. Bauer, Jr. of the police department and myself—the desk sergeant had received a call from some woman at the Greyhound Bus Station that there were several colored people sitting at the lunch counter. In the absence of the Chief of Police, Inspector E. O. Bauer, Jr. and myself proceeded to the bus station with some officers and saw these people sitting at the lunch counter.

Q. Any particular lunch counter? Was it a lunch counter [fol. 44] reserved for colored people or white people?

A. No, the lunch counter was reserved for white people.

Q. Anyway what, if anything, did you do?

A. Well, Inspector Bauer talked to one of the group.

Q. Did you hear what was said?

A. No. And then he talked to them the second time and then he told them that they were under arrest. He called the officers in from outside, they were waiting outside, they came into the white side of the bus station where these people were sitting and they placed them under arrest.

Q. What for?

A. For disturbing the peace.

Q. Well I mean what was the purpose of your going over there?

A. Well we were called because of the fact that they were sitting in a section reserved for white people.

Q. And were they sitting there when you got there?

A. They were.

Q. Did you ask them to move?

A. We did.

Q. You gave them an opportunity to get up and leave?

A. That's right.

Q. And did they.

A. No.

Q. Were they all together.

A. That's right.

Q. These here?

A. That's right.

Q. Was there any response to your order or your request then for them to move, did they say anything and if so what?

A. No, they didn't say anything that I know of.

Q. And they remained seated?

[fol. 45] A. That's right.

Cross examination.

By Counselor Jones:

Q. Officer, when you asked them to go, that they were under arrest, did they get up and go with you?

A. Yes.

Q. They came along peacefully, did they not?

A. Yea.

Q. Officer, you testified that they were seated at this cafe counter seat in the section or the side that was reserved for white, is that correct?

A. That's right.

Q. Now, how did you know that this particular side in which they were sitting was reserved for whites?

A. Well, it is pretty obvious from the people there.

Q. From the people there? These students were they, were they not sir?

A. That's right.

Q. These defendants, they were there, weren't they?

A. That's right.

Q. They are not white?

A. No, they sure aren't.

Q. And that's the way you determined it was reserved for white because of the people that were there?

A. That's right.

Q. Why did you arrest them, officer?

A. Because according to the law, in my opinion, they were disturbing the peace.

Counselor Tureaud: I object to the—

[fol. 46] Counselor Roy: Well, he asked the question.

The Court: He asked why and he can explain why. As an officer he was asked why he made the arrest and I think he can explain why.

Q. What was your answer to that officer?

A. That in my opinion they were disturbing the peace.

Q. Within your opinion. Explain your opinion.

A. The fact that their presence was there in the section reserved for white people, I felt that they were disturbing the peace of the community.

Q. Was there any sign saying that this counter and this seat in which they were sitting was reserved for white, sir?

A. No, I hadn't noticed any sign.

Q. You didn't see any?

A. No.

Q. The fact that you didn't see any there, would you say one was or was not there?

A. I didn't see any.

Q. The fact that you didn't see any sign saying reserved for whites or for colored, would you say one was there or was not there?

The Court: That would call purely for an opinion on his part. If he didn't see any he is not competent to testify whether one was there. The only way he would know it—

Counselor Jones: I withdraw that question, Your Honor. [fol. 47] The Court: If he didn't observe it visually he would know it by hearsay, which would be inadmissible.

Counselor Jones: I withdraw that question.

By the Court:

Q. These defendants, can you identify all of them?

A. Yes, sir.

Q. And while you were there they were requested to leave?

A. Yes, sir.

Q. By you or by Major Bauer?

A. By Major Bauer.

Q. In your presence?

A. Yes, sir.

Q. And I think you testified that you didn't know whether they said anything or not, these defendants, but that they did refuse to leave?

A. The first time they were asked to, yes, sir.

Q. You don't recall whether they said anything at all?

A. No, they just sat there.

Q. Was it at that time that you and the officer, the other officer, informed them that they were under arrest?

A. We placed them under arrest, Major Bauer and myself. The two officers who were there with the patrol wagon remained outside until we called them in.

Q. But what I want to clear up, I think it is fairly clear but I want to go over it again, you requested these defendants to leave the counter or the stools that they were sitting on before you arrested them?

A. That's right, sir.

[fol. 48] Q. And they refused to leave?

A. That's right.

Q. And that's when you made the arrest?

A. That's right.

Redirect examination.

By Counselor Roy:

Q. And officer, you were doing—what you were doing you were doing pursuant to a complaint which originated from this bus station?

A. That's right, we received a call from one of the women working there.

Recross examination.

By Counselor Jones:

Q. You requested them to move then because they were colored, is that right, sitting in those seats?

A. We requested them to move because they were disturbing the peace.

Q. In what way were they disturbing the peace?

A. By the mere presence of their being there.

Witness excused.

Mr. Roy: The State rests in chief.

Counselor Jones: That's all, Your Honor.

FINDING OF GUILT

The Court: All of the accused stand up. The State has introduced testimony of two witnesses in this case which is not disputed at all by the defense. In fact there is no evidence by the defense, and under this Article 103, Sec- [fol. 49] tion 7, the one that they are charged under, it is the decision of the Court that they are guilty as charged for the reason that from the evidence in this case their actions in sitting on stools in this place of business when they were requested to leave and they refused to leave; the officers were called, the officers requested them to leave

and they still refused to leave, their actions in that regard in the opinion of the Court was an act on their part as would unreasonably disturb and alarm the public. The Court is convinced beyond a reasonable doubt from the testimony in the case that these accused are guilty as charged.

Counselor Tureaud: Your Honor, we ask that sentence be deferred, and we wish to take exception to Your Honor's judgment finding them guilty and reserve our rights. The defendants take exception to the ruling of the court and judgment of the court finding them guilty and ask that a formal bill of exception be reserved to Your Honor's ruling and the reasons given by Your Honor for the judgment.

Counselor Jones: We also here and now inform the court that we intend to apply to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition.

The Court: Upon request of counsel, sentence is deferred in this matter until July 5, 1960. In the meantime they will be released on their present bonds.

Testimony closed.

[File endorsement omitted]

[fol. 51]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
DIVISION "A"

MINUTES OF COURT—Thursday, June 2, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566—Criminal Docket

STATE OF LOUISIANA

VS.

MARY BRISCOE, EDDIE C. BROWN, JR., LARRY L. NICHOLS,
CHARLES L. PEABODY, LAWRENCE HURST, SANDRA ANN
JONES, MACK JONES.

This case came on for trial in accordance with previous assignment, the accused being present in court represented by counsel. Counsel for the accused stated to the court that they wished to reserve any and all rights they may have under the writs of certiorari, mandamus and prohibition that have been denied, and the application for rehearing presently pending.

On motion of counsel for the accused, the Court ordered a sequestration of witnesses in this case.

MINUTE ENTRY OF FINDING OF GUILT

Evidence was introduced and the case submitted. Whereupon, the Court for oral reasons assigned, found the accused guilty of disturbing the peace, as charged, to which ruling of the court counsel for the accused objected and reserved a formal bill of exception. Counsel for the accused gave notice to the Court and to opposing counsel of

their intention to apply to the Supreme Court of Louisiana for writs of certiorari, prohibition and mandamus.

Sentence deferred until July 5, 1960.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 52]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

MOTION FOR A NEW TRIAL—Filed July 5, 1960

And now come the said Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones (hereinafter referred to as "Defendants"), through their undersigned counselor, and move the Court that the verdict of this Honorable Court rendered herein on Thursday, June 2, 1960, be set aside and a new trial ordered, for the following reasons, to-wit:

—1—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendants, neither of them, were ever ordered to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, by an agent of the said Greyhound Restaurant as so alleged in the Bill of Information under which the said defendants are charged; that the agent, a waitress employee, merely told the said defendants that they, defendants, would have to go to the other side to be served (Tr. 3); that the said agent or waitress employee told the defendants that they would be served on the other side because the colored people were supposed to be on the other side and that the defendants were seated at the said cafe counter in seats

reserved for white people, notwithstanding, that there was no such sign designating such reservation of seats (Tr. 4 and 5).

—2—

That it is clearly shown by the evidence adduced on the [fol. 53] trial of this case that the said verdict is contrary to the law and the evidence since the said Bill of Information alleges and avers that the defendants refused to move from a cafe counter seat at said Greyhound Restaurant after having been ordered to do so by the agent thereof as distinguished from being told that they, defendants, would be served on the other side where, assumingly, there were seats reserved for colored people or members of the Negro race.

—3—

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions of the Constitutions of the State of Louisiana and of the United States of America, respectively.

Wherefore, your movers pray that, after due proceedings had, the verdict of the Honorable Court be set aside and a new trial ordered herein.

Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols,
Charles L. Peabody, Lawrence Hurst, Sandra Ann
Jones, Mack Jones.

Attorneys for Defendants: Johnnie A. Jones and
A. P. Tureaud, By: Johnnie A. Jones.

[fol. 54] *Duly sworn to by Mary Briscoe and Eddie C. Brown, Jr. et al., jurat omitted in printing.*

[File endorsement omitted]

[fol. 55]

IN THE NINETEENTH JUDICIAL DISTRICT COURT
DIVISION "A"

MINUTES OF COURT—Tuesday, July 5, 1960

Nineteenth Judicial District Court, Division A, Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

No. 35,566—Criminal Docket

STATE OF LOUISIANA,

vs.

MARY BRISCOE, et al.

MINUTE ENTRY OVERRULING MOTION FOR NEW TRIAL

The accused, having previously been tried and found guilty of disturbing the peace, were this day present in court represented by counsel.

The accused, through counsel, filed a motion for a new trial. The motion was argued and submitted, and the Court, for oral reasons assigned, overruled the motion for a new trial, to which ruling of the Court counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused stated to the Court that he would like to renew all reservations and motions previously filed, all notices previously given, and all bills of exception previously taken.

MINUTE ENTRY OF SENTENCE

The accused were brought before the bar for sentence. Whereupon, the Court sentenced each of the accused, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, to pay a fine of \$100.00 and costs, or in default of payment thereof to be confined in the parish jail for ninety days, and in addition thereto to be confined in the parish

jail for thirty days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence counsel for the accused excepted and reserved a formal bill of exception. Counsel for the accused requested that the accused be released on their present bonds and gave notice to the Court and opposing counsel of his intention to apply to the Supreme Court of the State of Louisiana for writs of certiorari, mandamus and prohibition. The Court granted counsel for the accused until [fol. 56] July 20, 1960 at 10 o'clock A.M. for the purpose of applying to the Supreme Court for writs, and ordered the accused released on their present bonds pending the application for said writs.

Clerk's Certificate to Foregoing Paper (omitted in printing).

[fol. 57]

IN THE NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

DIVISION "A"

[Title omitted]

BILL OF EXCEPTIONS—July 15, 1960

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that on Thursday, June 2, 1960, this case came on for trial in accordance with previous assignment, the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, being present in Court represented by Counsel. Evidence was introduced and the case was submitted. Whereupon, the Court, for oral reasons assigned, found the defendants guilty of disturbing

the peace, as charged, to which ruling or verdict of the Court Counsel for the defendants did then and there object and reserve a formal Bill of Exception thereto and gave notice to the Court and to the opposing Counsel of their intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Prohibition and Mandamus.

—2—

Be It Further Remembered, that the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, having previously been tried and found guilty of disturbing the peace, were on the 5th day of July, 1960, present in Court represented by Counsel; that the defendants, through Counsel, filed a "Motion For a New Trial," which motion was argued and submitted, and the Court, for oral reasons assigned, overruled the Motion For a New Trial, to which ruling of the Court Counsel for the defendants [fol. 58] did then and there except and reserve a formal Bill of Exception and requested that all reservations, motions, notices and Bills of Exceptions previously filed, taken and/or given be renewed.

—3—

Be It Further Remembered, that on Tuesday, July 5, 1960, the defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, were brought before the Bar for sentence. Whereupon, the Court sentenced each of the said defendants to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or default of payment thereof to be confined in the Parish jail for Ninety (90) days, and in addition thereto to be confined in the Parish jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, to which sentence Counsel for the said defendants did then and there except and reserve a formal Bill of Exception, and requested that the defendants be released on their present bonds and gave notice to the Court and opposing Counsel

of his intention to apply to the Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

The defendants, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, through their Attorneys of Record, having submitted this their Bills of Exception to the District Attorney, now tenders the same to the Court and pray that the same be signed and sealed by the Judge of the Honorable Court pursuant to the statute in such case made and provided, which is done accordingly this 15th day of July, 1960, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court of Louisiana.

Respectfully submitted,

Attorneys for Defendants: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 89]

IN THE SUPREME COURT OF LOUISIANA

Number 45336

STATE OF LOUISIANA, Appellee,

versus

MARY BRISCOE, et al., Defendants-Appellants.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

Honorable Fred S. LeBlanc, Judge, Presiding

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols,

Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones (hereinafter referred to as "Relators") applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That relators show that this cause was previously before this Honorable Supreme Court on an "Application For Writs of Certiorari, Mandamus and Prohibition," under Case Number 45,212, State of Louisiana, Appellee, versus Mary Briscoe, et al., Defendants-Appellants; that relators do hereby plead the filings and pleadings of said cause Number 45,212, State of Louisiana, Appellee, versus Mary Briscoe, et al., Defendants-Appellants, and make same a part hereof, by reference thereto, the same as if written herein "in extenso".

[fol. 60]

—2—

That the Honorable Court aquo erred in overruling relators' Motion For a New Trial; that the evidence adduced on the trial of this cause clearly established that the relators herein, neither of them, were ever ordered to move from a cafe counter seat at Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, by an agent thereof as so alleged in the Bill of Information under which the relators herein are charged; that the evidence clearly establishes that the agent or employee of the said Greyhound Restaurant merely told your relators that they would be served on the other side because the colored people were supposed to be on the other side and that your relators were seated at the said cafe counter in seats reserved for white people, notwithstanding, that there is no such sign designating such reservation of seats (Tr. 3, 4 and 5).

—3—

That the verdict and sentence of the Honorable Court aquo are in error in that same are contrary to the law and evidence and repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the

Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as constitutionally guaranteed all citizens of the State of Louisiana and of the United States.

—4—

Relators show that a true original duplicate copy of their "Motion For a New Trial" is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that relators allege and aver that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of these proceedings and a review of the rulings of which your relators complain, there being no appeal by right of law after the trial on the merits have been had.

—5—

That relators have given due notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge of relators' intention [fol. 61] to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition, all in accordance with the law and rules of this Honorable Court.

Wherefore, your relators respectfully pray that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court, directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its Docket, Number 35,566, State of Louisiana versus Mary Briscoe, et al., and that the said decree or judgment of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relators may have such other and further

relief in the premises as to this Honorable Court may seem meet and just; and your relators will ever pray.

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 62] State of Louisiana
Parish of East Baton Rouge

AFFIDAVIT

Before Me, the undersigned authority, personally came and appeared Johnnie A. Jones, Esq., who, after being by me first duly sworn, deposes and says:

That he is one of the Attorneys for relator in the above and foregoing pleadings, that he prepared the same; that he gave notice of intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition in this case to the Judge of the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge, and to the State of Louisiana, through the District Attorney in the Parish of East Baton Rouge, State of Louisiana; and that, all of the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.

Affiant further declares that before presenting a copy of the foregoing pleadings to this Honorable Court, a copy of same had been served upon the said Judge and upon the State of Louisiana, through the District Attorney for the Parish of East Baton Rouge, State of Louisiana, by handing a copy of same to each of said parties.

Johnnie A. Jones

Sworn to and Subscribed before me this 19th day of July, 1960.

Murphy W. Bell, Notary Public.

May It Please The Court:

The Opinions of the District Court

This case, on Thursday, June 2, 1960, was before the Honorable Court aquo on its merits. Evidence was introduced and the case submitted. Whereupon, the Court for oral reasons assigned, found your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, guilty of disturbing the peace, as charged, all in accordance with the Minutes of the Honorable Court aquo, dated Thursday, June 2, 1960, a True and Correct Extract copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso"; that on Tuesday, July 5, 1960, your relators having previously been tried and found guilty of disturbing the peace, filed a Motion For a New Trial. The Motion was argued and submitted, and the Honorable Court aquo, for oral reasons assigned, overruled the Motion For a New Trial, and sentenced each of your relators to pay a fine of One Hundred and No/100 (\$100.00) Dollars and costs, or in default of payment thereof to be confined in the Parish Jail for Ninety (90) days, and in addition thereto to be con-[fol. 64] fined in the Parish Jail for Thirty (30) days, the latter part of this sentence to run consecutively with the first part of this sentence in the event of non-payment of the fine and costs, all in accordance with the Minutes of the Honorable Court aquo of Tuesday, July 5, 1960, a True and Correct Extract copy of which is hereto attached, annexed, incorporated and made a part hereof the same as if written herein "in extenso".

Jurisdiction

This case is predicated on LSA-R. S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

Syllabus

"The likelihood, however great, that substantive evil result cannot alone justify a restriction upon freedom of speech or press, but the evil itself must be substantial and serious and even the expression of legislative preferences or beliefs cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant curtailment of liberty of expression." *Graham v. Jones*, 200 La. 137, 7 So (2d) 688 (1942).

"The constitutional guarantee of due process of law does not mean a procedure that endangers the innocent, but it means procedure that preserves those enduring principles enunciated in the Bill of Rights and the preservation of those basic rights termed inalienable in the Declaration of Independence." *State v. Straughan*, 229 La. 1036, 87 So (2d) 523 (1956).

"The right of personal liberty is one of fundamental rights guaranteed to every citizen, and any unlawful interference therewith may be resisted." *City of Monroe v. Ducas*, 203 La. 974, 14 So (2d) 781 (1943).

"An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State v. Sanford, et al.*, 203 La. 961, 14 So (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable [fol. 65] or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill v. Alabama*, 310 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Fourteenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh v. Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment. *Cantwell v. Connecticut*, 310 U. S. 296, at p. 303 (1940).

Statement of the Case

Your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, are all Negro college students having been charged, tried and sentenced for and/or with the crime of Disturbing the Peace under the provisions of LSA-R. S. 14:103(7) of 1950, as amended; that the Bill of Information charges the relators with having committed a crime by refusing to move from a cafe counter seat at

Greyhound Restaurant, 212 St. Phillip Street, Baton Rouge, Louisiana, on the 29th day of March, 1960, after having been ordered to do so by an agent thereof, relators' conduct [fol. 66] being in such manner as to unreasonably and foreseeably disturb the public, contrary to the form of the Statutes of the State of Louisiana, et cetera. However, the evidence adduced on the trial of this cause clearly established that your relators, neither of them, were ever ordered to move from a cafe counter seat at the said Greyhound Restaurant by an agent thereof as so alleged in the Bill of Information under which your relators are charged. The evidence clearly establishes that the agent or employee of the said Restaurant merely told your relators that they would be served on the other side where the Colored people were supposed to be, in that, your relators were seated at the said cafe counter in seats reserved for White people, notwithstanding that there was no such sign designating such reservation of seats (Tr. 3, 4 and 5), which evidence is counter-distinguished from the allegations of the Bill of Information.

Specification of Errors

1. That the Honorable Trial Court erred in finding your relators guilty as charged. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence in that, your relators were never ordered to move but rather were told that they would be served at some other counter reserved for Colored people other than the cafe counter at which they were seated, which counter was reserved for White people only.
2. That the verdict of the Honorable Trial Court is contrary to the law and to the evidence, in that, it denies and deprives your relators of their rights, privileges, immunities and liberties guaranteed all citizens of the State of Louisiana and of the United States by Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and of the First and Fourteenth Amendments to the Constitution of the United States.

3. That the Honorable Trial Court erred in overruling your relators' Motion For a New Trial, for reasons, that the verdict of the Honorable Trial Court in finding your relators guilty as charged was contrary to the law and evidence as aforesaid.
4. That for reasons aforesaid, the sentence of the Honorable Trial Court is in error and contrary to the law and the evidence.

Issue

Whether or not the mere act of your relators, Negro college students, sitting in seats at a cafe counter reserved for White people by custom and tradition, or otherwise, constitute a crime within the meaning and contemplation of or whether the said act of your re-[fol. 67] lators is a crime embraced within the meaning and contemplation of LSA-R. S. 14:103(7) of 1950, as amended, and if so, is said provision of said statute unconstitutional in that it deprives persons, particularly relators, of their rights, privileges, liberties and immunities guaranteed by the Constitutions of the State of Louisiana and of the United States?

Argument

As it has been pointed out, your relators were never ordered to move from the said cafe counter seat as so alleged in the Bill of Information, but rather, your relators were told or advised that they would be served at a cafe counter which was reserved for Colored people or members of the Negro Race (Tr. 3, 4 and 5) as counter-distinguished from being ordered to move by an agent of said Restaurant. "One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defined the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State v. Christine*, 118 So (2d) 403 (Advance Sheets, April 7, 1960).

Your relators file herewith and make a part hereof the same as if written herein "in extenso" an original duplicate copy of the "Transcript" of which the testimony therein was adduced and taken on the trial of the merits of this cause on Thursday, June 2, 1960.

Conclusion

Thus, it is respectfully submitted that the Bill of Information under which your relators are charged is insufficient to allege a crime based on the evidence adduced on the trial of this cause, and that the act of conduct of your relators is not a crime embraced in LSA-R. S. 14:103(7) of 1950, as amended.

Wherefore, relators respectfully and humbly pray that the rulings and/or judgments of the Honorable Trial Court be reversed and that the verdict and sentence as to them, each, and as far as they are concerned be declared null and void and that your relators, Mary Briscoe, Eddie C. Brown, Jr., Larry L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra Ann Jones and Mack Jones, be [fol. 68] discharged therefrom.

Respectfully submitted,

Attorneys for Relators: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

Certificate of service (omitted in printing).

[fol. 70]

IN THE SUPREME COURT OF LOUISIANA

New Orleans

By Hawthorne, J.:

No. 45,336

STATE OF LOUISIANA

v.

MARY BRISCOE, et al.

OPINION AND JUDGMENT—October 5, 1960

In re: Mary Briscoe et al.

Applying for writs of certiorari, mandamus and prohibition.

Writs refused.

This court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The rulings of the district judge on matters of law are not erroneous. See Town of Pontchatoula vs. Bates, 173 La., 824, 138 So., 851.

FWH, JBH, EHM_{cc}, WBH, RAV, LPG, HFT.

[fol. 71]

IN THE SUPREME COURT OF LOUISIANA

[Title omitted]

PETITION FOR STAY OF EXECUTION AND ORDER
GRANTING SAME—October 7, 1960

To the Honorable, Chief Justice and Associate Justices of
the Supreme Court of the State of Louisiana:

The petition of Mary Briscoe, Eddie C. Brown, Jr., Larry
L. Nichols, Charles L. Peabody, Lawrence Hurst, Sandra
Ann Jones and Mack Jones, defendants in the above num-
bered and entitled cause, with respect represents:

—1—

That the decree of this Honorable Court, rendered Octo-
ber 5, 1960, refusing their Application For Writs of Cer-
tiorari, Mandamus and Prohibition and, thus, affirming
the verdict and sentence of the Nineteenth Judicial Dis-
trict Court of Louisiana, Division "A", is final, there being
no right of rehearing therefrom.

—2—

Petitioners aver that the opinion and decree of this Hon-
orable Court deprives them of their rights guaranteed them
under Article 1, Sections 2 and 3 of the Constitution of
Louisiana of 1921, and of the First and Fourteenth Amend-
ments to the Constitution of the United States, depriving
them of their freedom of speech, liberties, privileges, im-
munities, due process and equal protection of the law as
constitutionally guaranteed all citizens of the State of
Louisiana and of the United States.

[fol. 72]

—3—

Petitioners aver that the opinion and decree of this
Honorable Court deprives them of their rights guaran-
teed them under Article 1, Sections 2 and 3 of the Con-
stitution of the State of Louisiana and by the 14th Amend-

ment of the Federal Constitution and that they were tried and convicted, over their protest, without due process of law, to-wit:

That the act of conduct of which the defendants are charged is not a crime denounced and defined by LSA-R.S. 14:103 (7) of 1950, as amended, nor is it a crime embraced within the meaning and contemplation of said Statute or within the criminal processes of the State of Louisiana, unless, or otherwise, in violation of the said Constitutional provisions, respectively.

—4—

Petitioners aver that they timely raised the said questions in the lower Court at the time of their arraignment and after their conviction in a motion for a new trial and in this Honorable Court by their Assignment of Errors.

—5—

Petitioners aver that they are desirous of applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal, to review the decision of this Honorable Court upon the issues shown by the record in this case; and that petitioners desire that they be given a stay or delay in which to apply to said Court; and that the decree or mandate of this Honorable Court be stayed so that petitioners will have an opportunity to so present their application to the Supreme Court of the United States for relief.

[fol. 73] Wherefore, petitioners pray that after due consideration that this Honorable Court grant them a reasonable stay of execution and that they be permitted a delay of 90 days in which to prepare and file in the Supreme Court of the United States their Application for a writ of Certiorari or appeal to review the decision of this Honorable Court and that the mandate and decree of this Honorable Court be withheld accordingly.

And for all general and equitable relief.

Attorneys for Petitioners, Johnnie A. Jones, A. P.
Tureaud.

*Duly sworn to by Mary Briscoe, Eddie C. Brown, Jr.,
jurat omitted in printing.*

ORDER

Let Petitioners be granted a stay of execution of the
decree of this Honorable Court for a period of 60 days.

Jno. B. Fournet, Chief Justice.

New Orleans, Louisiana
October 7th, 1960

[fol. 74]

IN THE SUPREME COURT OF LOUISIANA

Number 45336

STATE OF LOUISIANA, Appellee

versus

MARY BRISCOE, et al., Defendants-Appellants

PETITION TO RELEASE EDDIE C. BROWN, JR. FROM CUSTODY
PENDING HIS APPLYING TO THE SUPREME COURT OF THE
UNITED STATES AND ORDER GRANTING SAME—October 11, 1960

To the Honorable, Chief Justice and Associate Justices of
the Supreme Court of the State of Louisiana:

The petition of Eddie C. Brown, Jr., one of the defen-
dants in the above numbered and entitled cause, with re-
spect represents:

-1-

That this Honorable Court on Friday, October 7, 1960, granted the defendants in this cause a "Stay of Execution" for a period of sixty (60) days, from said date, October 7, 1960, to apply to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal; that among the defendants in whom favor said "Stay of Execution" was granted, your petitioner herein, Eddie C. Brown, Jr., was and is one of them.

-2-

That at the time of the granting or issuance of said "Stay of Execution" by this Honorable Court, the said Eddie C. Brown, Jr., the petitioner herein, had been, on the day previously, arrested by the Sheriff of East Baton Rouge Parish, Louisiana, under the conviction and sentence imposed on him by this Honorable Court's affirmance of the Judgment of the Nineteenth Judicial District Court of Louisiana, Division "A".

[fol. 75]

-3-

That the Honorable Judge Fred S. LeBlanc of the said Nineteenth Judicial District Court of Louisiana, Division "A", has refused and failed to comply with the "Stay of Execution" granted and issued herein by this Honorable Court on October 7, 1960, as it, respectively, relates to the petitioner herein, Eddie C. Brown, Jr.; that the said Eddie C. Brown, Jr. is still in the custody of the Sheriff of the Parish of East Baton Rouge, State of Louisiana, and awaits, to no avail, the said District Judge to order his release.

-4-

That, therefore, it is necessary that an order by this Honorable Court issue herein, directed to the Honorable Fred S. LeBlanc, Judge of the Nineteenth Judicial District Court, of Louisiana, Division "A", commanding and directing him to order the release of the said Eddie C. Brown, Jr., forthwith, pending his making application to the Supreme Court of the United States for a Writ of Certiorari and

Review, or appeal within sixty (60) days from October 7, 1960.

Wherefore, petitioner, Eddie C. Brown, Jr., prays:

That, after due consideration, an order issue by this Honorable Court, directed to the Honorable Fred S. LeBlanc, Judge, Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, Division "A", commanding and directing him to order the release of the said Eddie C. Brown, Jr., from the custody of the Sheriff of said Parish, forthwith, pending his applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal within sixty (60) days from October 7, 1960.

And for all general and equitable relief.

Attorneys for petitioner: Johnnie A. Jones and A. P. Tureaud, By: Johnnie A. Jones.

[fol. 76] *Duly sworn to by Johnnie A. Jones, jurat omitted in printing.*

Order

Let the said Fred S. LeBlanc, Judge of the Nineteenth Judicial District Court of Louisiana, Division "A", be, and he is hereby ordered, commanded and directed to order the release of the said Eddie C. Brown, Jr. from the custody of the Sheriff of the Parish of East Baton Rouge, State of Louisiana, forthwith, pending his applying to the Supreme Court of the United States for a Writ of Certiorari and Review, or appeal within sixty (60) days from October 7, 1960.

New Orleans, Louisiana, October 11th, 1960.

Jno. B. Fournet, Chief Justice.

[fol. 77] *Praeipice (omitted in printing).*

[fol. 79] *Clerk's Certificates to foregoing transcript (omitted in printing).*

[fol. 81]

SUPREME COURT OF THE UNITED STATES

No. 618—October Term, 1960

MARY BRISCOE, et al., Petitioners,

VS.

LOUISIANA.

ORDER ALLOWING CERTIORARI—March 20, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted. The case is consolidated with Nos. 617 and 619 and a total of three hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.